

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 65 of 1998

in

SPECIAL CIVIL APPLICATION No 6128 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SURJITSING SHOBHASING KODA

Versus

AHMEDABAD MUNICIPAL CORPN.,

Appearance:

MR KS ACHARYA for Appellants

MR HS MUNSHAW for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 26/03/98

ORAL JUDGEMENT

Admitted. Mr.Munshaw, learned counsel for the
respondent Corporation appears and waives service of

notice of admission on behalf of the respondent Corporation. In the facts and circumstances of the case, the matter is taken up for final hearing to day.

This appeal is filed against an interim order passed by the learned Single Judge in Special Civil Application No.6128 of 1997. That petition is filed by the appellant-petitioner against the action of non-releasing of the Provident Fund and other benefits. The case of the appellant is that he was serving with respondent Corporation. He retired from service from October 31, 1995.

On reaching the age of superannuation he was entitled to retiral benefits. It is the case of the appellant that even though he was entitled to retiral benefits, those benefits have not been given to him on the ground that the wife of the appellant was occupying quarter allotted to the appellant by the Corporation. The appellant's case is that he specifically informed the Corporation that since he had retired from service, he did not intend to retain quarter and that appropriate action be taken to take back possession thereof. The case of the respondent Corporation, on the other hand, was that the appellant didnot handover vacant possession of the quarter to the Corporation and the wife of the appellant was occupying it. As neither the wife of the appellant nor the appellant paid amount of rent due and payable to the Corporation, an action was taken.

When the petition came up for admission before the learned Single Judge, the learned Single Judge was of the opinion that the matter required consideration. The matter was, therefore, admitted. On interim relief, however, in para 4, the learned Single Judge observed:

" It appears that the petitioner has permitted his wife to occupy the quarter after he retired from service. In any circumstances, the petitioner being the servant of the Corporation is primarily liable to pay the rent for unauthorised occupation of the quarter by his wife after his retirement. In my view, by interim direction, the Corporation cannot be directed to pay up the arrears of pension and provident fund due and payable to the petitioner which is almost equivalent to the arrears of the rent recoverable from the petitioner. However, if the respondent No.2 pays the market rent to the Corporation as stated before this court, the

pension due and payable to the petitioner be paid to him. In view of the above discussion, interim relief is refused."

We have heard Mr.Acharya, learned counsel for the appellant and Mr.Munshaw, learned counsel for the respondents.

Mr.Acharya submitted that it is not open to the Corporation to withhold the Propvident Fund amount and a specific provision is made to that effect in the Provident Funds Act, 1925. He submitted that by taking such action, the authority has acted illegally and exceeded its jurisdiction. He also placed reliance on the following decisions of Hon'ble Supreme Court;

- (1) Union of India v. Prince Muffakam Jah & Ors.
AIR 1952 SC 227,
- (2) Union of India v. Radha Kissen Agarwala & another;
AIR 1969 SC 762; and
- (3) Union of India v. Jyoti Chit Fund & Finance, AIR 1976 SC 1163.

Mr.Munshaw, on the other hand submitted that when possession of quarter was not handed over by the appellant and that the quarter is occupied by the wife of the appellant, the action taken by the respondent authority cannot be said to be arbitrary or unlawful. He also submitted that the learned Single Judge has not granted interim relief. Grant of interim relief would amount to allowing the petition which is still to be heard and finally decided.

In the facts and circumstances of the case and without expressing final opinion, ends of justice would be met if we direct the respondent Corporation to release amount of Provident Fund of the appellant as expeditiously as possible preferably within six weeks from to day. So far as main matter is concerned, the learned Single Judge will decide the same on its own merits and we may state that we have not expressed any opinion on that aspect.

The appeal is accordingly partly allowed to the above extent. It is open to the learned advocate for the appellant to request the learned Single Judge for early

disposal of the matter. If the matter is not heard for long time it is open to the the appellant to file application for interim relief. D.S.

Dt. 26.3.1998. (C.K.THAKKER J.)

(A.L.DAVE J.)